

87-1217

Supreme Court, U.S.

FILED

NOV 10 1987

JOSEPH F. SPANIOLO, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

JOHN AND NANCY LORENZINI

PETITIONERS,

v.

STATE OF NEW JERSEY

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE
BERGEN COUNTY SUPERIOR COURT OF NEW JERSEY

JOHN and NANCY LORENZINI
16 NOTTINGHAM COURT
MONTVALE, N.J. 07647
(201) 573-0622 HOME
(201) 768-9789 WORK

15PV

QUESTIONS PRESENTED FOR REVIEW

1. After complying with the requirements to have a single attorney represent co-defendants (John and Nancy Lorenzini; husband and wife) can they be compelled by the State of New Jersey to retain separate counsel against their expressed wishes.

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PETITIONERS

v.

STATE OF NEW JERSEY

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE
BERGEN COUNTY SUPERIOR COURT

The petitioners, John and Nancy Lorenzini, respectfully request that a writ of certiorari be issued to review the judgement of the Superior Court of New Jersey entered on October 16, 1985.

PRECEDING LITIGATION

Supreme Court of New Jersey denied petitioners motion of appeal on September 15, 1987. A copy of the denial is attached as Appendix A.

Superior Court of New Jersey Appellate Division denied petitioners motion for leave to appeal on December 30, 1985. A copy of the Order is attached as Appendix B.

CONSTITUTIONAL PROVISION INVOLVED

What is at stake is not the petitioners right to be represented by counsel but the right of a husband and wife to be represented by a single counsel of their choice if they so desire. This right of choice is voiced by several opinions from the United States Supreme Court.

STATEMENT OF THE CASE

On December 2, 1984 and December 3, 1984 eleven people were arrested and charged with gambling violations against the State of New Jersey.

By February 4, 1985 ten people were indicted on gambling violations. See Appendix C1 and C2 for specifics.

On February 25, 1985 Anthony Pace, attorney for John and Nancy Lorenzini, wrote Judge Alfred D. Schiaffo (presiding justice) of his clients desire to retain him as single counsel for both defendants. A copy of the letter is attached as Appendix D.

By September 1985 six defendants had pled guilty to various charges and were sentenced as follows:

Richard Yacovelli: Four years probation and a fine.

James Capuano: Four years probation and a fine.

Victor Moncaleri: Two years probation and a fine.

Donald Scheulen: Two years probation and a fine.

Thomas Scheulen: Two years probation and a fine.

Patrick Borzone Jr.: Two years probation and a fine.

On October 16, 1985 a 'Green Hearing' was held and John and Nancy Lorenzini were ordered to retain seperate counsel.

Petitioners made a timely appeal to the Appellate Division of the Superior Court of New Jersey. It was denied (See Appendix B).

Petitioners made an untimely appeal to the Supreme Court of New Jersey and were again denied. (See Appendix A).

Petitioners were again ordered by Judge Schiaffo to obtain separate counsel and be ready for trial by October 5, 1987 just four days after the denial from the Supreme Court of New Jersey. Trial date was extended to October 26, 1987.

REASONS FOR GRANTING THE WRIT

The fundamental purpose of a 'Green Hearing' is to inform both husband and wife of potential dangers from joint representation, discuss possible alternatives and then allow husband and wife to decide for themselves what defense best serves them. It is unusual after a Green Hearing to force a husband and wife to seek separate counsel; especially after their desire to have single counsel represent them

has been made a matter of record. Yet that is precisely what is being done and in a hasty matter.

The very case itself, State vs Green 129 N.J. Super, contains language and defense for co-defendants (husband and wife) to retain single counsel. I quote:

1. The Supreme Court has held that the sixth amendment right to fair and effective counsel can be abridged when several defendants are represented by one counsel. Glasser vs. United States, 315 U.S.60,62S.Ct.457,S6L.Ed.6S0 (1942). Although recognizing that this constitutinal right could be waived, the Court said any waiver must be made knowingly and intelligently ***

2. Recognizing that the right to such assistance of counsel may be waived (citation omitted).

3. Whenever an instance of dual representation appears, it would be appropriate for the court to conduct a voir dire at the earliest convenient time to

determine whether or not all defendants thus represented have been fully informed of the potential hazards of such a course. If they have been fully informed and still elect to proceed in that fashion, their willingness to do so should be made a matter of record. If this procedure is followed it will be unnecessary for an appellate division to decide on a silent record whether or not a defendant has been denied his constitutional right to effective assistance of counsel by joint representation.

After complying with the requirements why are the Lorenzini's not being allowed to proceed in their case with a single attorney of their choice or has the presumption of innocence gone by the wayside and been replaced by a

~~presumption of guilt~~
~~presumption of guilt~~ presumption of guilt.

In some of the very cases cited by the State vs. Green (ie. Glasser v. United States, Government of the Virgin Islands v. Hernandez, etc.) new trials would not have been ordered if

records had shown that all defendants represented were aware that joint representation had pitfalls and/or a waiver had been made a matter of record.

Quite the opposite is true here; a hearing was held and waivers were offered and made a matter of record.

CONCLUSION

John and Nancy Lorenzini respectfully request that the United States Supreme Court reverse the rulings in the lower courts, rule in their favor and allow them to proceed with one counsel to represent the both of them.

Thank you for your time and patience.

Respectfully yours,

John Lorenzini
John Lorenzini (pro se)

Nancy Lorenzini
Nancy Lorenzini

SUPREME COURT OF NEW JERSEY
M-70/71/72 September Term 1987

STATE OF NEW JERSEY,

Plaintiff-Respondent,

vs.

O R D E R

RICHARD YACOVELLI,

Defendant,

and

JOHN LORENZINI and NANCY LORENZINI,

Defendants-Movants.

This matter having been duly presented to the Court, it is ORDERED that the motion for leave to appeal as within time (M-71) is denied; and it is further

ORDERED that the motion for stay (M-72) is denied; and it is further

ORDERED that the motion for leave to appeal is (M-70) is dismissed as moot.

WITNESS, the Honorable Robert L. Clifford, Presiding Justice, at Trenton, on this 11th day of September, 1987.

S - illegible
CLERK OF THE SUPREME COURT
OF NEW JERSEY

S - illegible
CLERK OF SUPREME COURT

ORIGINAL ON FILE

App. - A

ORDER ON
MOTIONS/PETITIONS

STATE OF NEW JERSEY

vs.

RICHARD YACOVELLI, et als

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. AM-325-85T5

MOTION NO. M-1326-85

BEFORE PART D

JUDGES: MICHELS
DEIGHAN
STERN

MOVING PAPERS FILED

NOVEMBER 14, 1985

ANSWERING PAPERS FILED

DECEMBER 16, 1985 AND DEC. 19, 1985

DATE SUBMITTED TO COURT

DECEMBER 11, 1985

DATE ARGUED

DATE DECIDED

DECEMBER 30, 1985

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT
IS HEREBY ORDERED AS FOLLOWS:

MOTION FOR LEAVE TO APPEAL
AND FOR STAY PENDING APPEAL

DENIED

SUPPLEMENTAL:

The motion is denied in all respects.

FOR THE COURT:

S - Herman D. Michels, P.J.A.D.

WITNESS, THE HONORABLE HERMAN D. MICHELS, PRESIDING
JUDGE OF PART D, SUPERIOR COURT OF NEW JERSEY, APPELLATE
DIVISION, THIS 30TH DAY OF DECEMBER 1985.

S - Elizabeth McLaughlin
CLERK OF THE APPELLATE DIV.

OFFICE OF THE COUNTY PROSECUTOR
COUNTY OF BERGEN
Hackensack, New Jersey 07601
(201) 646-2300

Larry J. McClure
County Prosecutor

February 4, 1985

Honorable Donald W de Cordova
Judge, Superior Court
Hackensack, New Jersey 07601

Re: State v. Richard Yacovelli
Patrick Borzone, Jr.
James J. Capuano
Victor Moncalieri
Donald Scheulen

Thomas Scheulen
John Lorenzini, III
Sharon Lorenzini
Nancy Lorenzini
Nicholas Lorenzini
Lee R. Bondy

Dear Judge:

The following indictments were returned against the
captioned defendants: CHARGES:

1. Conspiracy to Promote Gambling (Bookmaking) 2C:5-2/2C:37-2
All defendants - 1 count each
2. Promote Gambling 2C:37-2
All Defendants - 1 count each
3. Maintaining Gambling Resort 2C:37-4a
Patrick Borzone, Jr. - 1 count
4. Maintaining Gambling Resort 2C:37-4b
John Lorenzini, III - 1 count
Nicholas Lorenzini - 1 count
5. Possess Gambling Records 2C:37-3
Richard Yacovelli - 1 count
James J. Capuano - 1 count
John Lorenzini, III - 1 count
Sharon Lorenzini - 1 count
Nicholas Lorenzini - 1 count

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App.-C1

P.O. 3367-84

6. Official Misconduct Over \$200 2C:30-2
Victor Moncalieri - 1 count

The following No Bill was voted in connection with the charge made against the captioned defendant:

CHARGE: (No Bill)

Maintaining Gambling Resort 2C:37-4b

Lee R. Bondy - count

Our office is retaining jurisdiction of the non-indictable complaints and disposition of same will be made upon disposition of the indictable offenses.

Unless the non-indictable complaints are returned to you for your attention, you may presume that they were disposed of upon disposition of the indictable offenses.

If you have any questions regarding the above defendants, please contact the undersigned.

Very truly yours,

Dominick P. Preziosi, Jr.
Assistant Prosecutor

cc: District Court; Criminal Part
cc: Defendants
cc: James Deer, Esq. (Borzone, Jr.)
cc: Robert Biagiotti, Esq. (D. Scheulen)
cc: Robert Galantucci, Esq. (T. Scheulen)
cc: Anthony Pace, Esq. (J. Lorenzini, III)
cc: Anthony Pace, Esq. (N. Lorenzini)
cc: Andrew Napalitano, Esq. (Bondy)

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App.-C2

ANTHONY J. PACE
Counsellor At Law

294 Harrington Ave.
Closter, N.J. 07624
(201) 767-1717

Mary Ann Pace Chase

February 25, 1985

The Honorable Alfred D. Schiaffo, J.S.C.
Bergen County Court House
Room 412
Hackensack, NJ 07601

Re: JOHN LORENZINI, III
NANCY LORENZINI - INDICTMENT NO. S-164-85

Dear Judge Schiaffo:

Pursuant to Your Honor's instruction and suggestion, I am writing this letter to request that Your Honor hold a Green Hearing at the earliest convenient date, so that both my clients, JOHN LORENZINI, III, and NANCY LORENZINI can advise the Court of their desire to have me continue as the Attorney representing both of them.

Please be advised that I have fully and completely explained to my clients, the Lorenzini's, the dangers and conflicts that may arise as a result of joint representation, and notwithstanding the fact, they have insisted that I continue as their attorney. We await the Court's pleasure concerning this application.

Thank you for your anticipated cooperation in this matter.

Respectfully yours,

S - ANTHONY J. PACE

AJP:rrm

cc: Patricia Baglivi, Prosecutor
Mr. and Mrs. J. Lorenzini, III

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App-D

I hereby certify that the following interested parties
were sent a copy by Certified Mail of the United States
Post Office:

Judge Alfred D. Schiaffo
Bergen County Court House
Hackensack, N.J. 07601

Bergen County Prosecutors Office
Bergen County Court House
Hackensack, N.J. 07601

Am. Leg. in.

Oct 20, 1987
Doris A. Heatherly

DORIS A. HEATHERLY
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES MAR. 15, 1989